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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,059	12/27/2000	James M. Proper	D/A0433Q	5636

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EXAMINER

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 03/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/749,059

Applicant(s)

Proper

Examiner
Charles Cooley

Art Unit
1723



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
 - 4a) Of the above, claim(s) 15-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-14 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☒ Claims 1-19 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - a) ☐ All b) ☐ Some* c) ☐ None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- | | |
|---|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> | 20) <input type="checkbox"/> Other: |

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OFFICE ACTION

1. This application has been assigned to Technology Center 1700, Art Unit 1723 and the following will apply for this application:

a. Please direct all written correspondence with the correct application serial number for this application to Art Unit 1723.

b. Telephone inquiries regarding this application should be directed to the Technology Center 1700 receptionist at ☎(703) 308-0651 or to the Examiner at ☎(703) 308-0112. Official facsimile correspondence filed before a final office action should be transmitted to ☎(703) 872-9310. Official facsimile correspondence which responds to a final office action should be transmitted to ☎(703) 872-9311.

c. Inquiries regarding application status, matching responses with applications, patent term questions, locating and retrieval of applications, incomplete office actions, requests for copies of office actions and/or references, requests to remail office actions, small/large entity status, or other administrative inquiries should be directed to the **Technology Center 1700 Customer Service Center** at ☎(703) 306-5665.

Election/Restriction

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

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- I. Claims 1-14 (as renumbered), drawn to a blending tool and a blending machine, classified in class 366, subclass 326.1.
- II. Claims 15-19 (as renumbered), drawn to a method of making toners, classified in class 399, subclass 254.

3. The inventions are distinct from each other because of the following reasons:

4. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process such as a process lacking a step of melt-mixing a mixture containing toner resin and colorants or blending the melt-mixture particles and surface additive particles, i.e., as evidenced by the applied prior art below, the apparatus as claimed can be used to blend materials other than toners.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and because the search required for Group is a divergent search, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Richard Spooner on 8 MAR 2002 a provisional election was made with traverse to prosecute the invention of Group I,

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claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Information Disclosure Statement

7. Note the attached PTO-1449 forms submitted with the Information Disclosure Statement filed 23 MAR 2001.

Drawings

8. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).

Specification

9. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

10. The disclosure is objected to because of the following informalities:

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a. Page 1: the requested amendment to page 1, line 14 has not been entered as the amendment is not in the proper format per 37 CFR 1.121 (all words to be inserted are underlined).

b. Page 1: the serial number of all referenced applications should be provided.

c. Page 11, lines 26 and 28 and Page 12, line 3: the period after "Figure" should be removed.

Appropriate correction is required.

11. The use of various trademarks has been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

12. The abstract is acceptable.

13. The title is acceptable.

Claim Objections

14. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims

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are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 13-20 have been renumbered as claims 12-19, respectively.

Claim Rejections - 35 U.S.C. § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. Claims 1 and 3-9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Krause et al. (USP 4,281,934).

The patent to Krause et al. (USP 4,281,934) discloses the recited blender tool comprising a shank 8; collision surface including a plate 14, 51; a connector mechanism including an arm 15 and a fastener 52 for fixing the position of the plate 14, 51; and collision plates 14 at each ends of the shank 8 (Fig. 2).

17. Claims 1, 3, 4, 7, 9, and 11-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Noda et al. (USP 5,785,424).

The patent to Noda et al. (USP 5,785,424) discloses the recited blender tool in Fig. 15 and blending machine comprising a vessel (i.e., a tank as disclosed at col. 1,

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lines 24-25); shank 10; collision surface including a plate 8; a connector mechanism including an arm 101 and a fastener 102 for fixing the position of the plate 8; and drive shaft 13.

18. Claims 1, 2, 4, 6, and 11-13 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gabriele (USP 5,009,510).

The patent to Gabriele (USP 5,009,510) discloses the recited blender tool and blending machine comprising a vessel 12 and drive shaft 18 (see cited USP 4,790,667 to Pardo et al. incorporated by reference by Gabriele); a shank 16; collision surface including a plate 12; a connector mechanism including an articulated hinge (Figs. 1-4); and an arm 20.

19. Claims 1, 3-9, and 11-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Jones (USP 739,422).

The patent to Jones (USP 739,422) discloses the recited blender tool and blending machine comprising a vessel 10; a shank 23; collision surface including a plate 25; a connector mechanism including an arm 26 and a fastener 28 for fixing the position of the plate 25; collision plates 25 at each ends of the shank 23 (Fig. 3); and a drive shaft 19.

20. Claims 1, 3, 4, 6-9, and 11-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Austin (USP 3,245,663).

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The patent to Austin (USP 3,245,663) discloses the recited blender tool and blending machine comprising a vessel 20; and as seen in Fig. 8 a shank 138; collision surface including a plate 130; a connector mechanism including an arm 136 and a fastener 140 for fixing the position of the plate 130; and a drive shaft 50.

* * *

With regard to the above rejections, the language of claims 12-13 is operational and functional in form and therefore fails to impart or invoke any means or structure to the elected apparatus claims which defines over the applied prior art.

Allowable Subject Matter

21. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited prior art discloses blending tools that are adjustable.

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23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Charles Cooley whose telephone number is ☎ (703) 308-0112.

24. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1700 receptionist whose telephone number is ☎ (703) 308-0651.

Dated: **11 March 2002**



Charles Cooley
Primary Examiner
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